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13
14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

16 United States of America,
17
18 Plaintiff,
19
20 vs.
21
22 Jesus Valencia,
23
24 Defendant.

CR 11-434-TUC-CKJ

Response to Defendant's Disposition
Memorandum

25 The United States of America, by and through its undersigned attorneys, responds to
26 the argument in the disposition memorandum of the defendant, Jesus Valencia,
27 concerning his prior sentence.

28 Valencia argues that the Court should sentence him to time served because he should
not have been on supervised release at the time he violated its terms. He argues that his
May 2012 sentence upon his previous violation of supervised release—seven months'
imprisonment plus twenty-four months' supervised release—went beyond a twenty-four-
month limitation on his total term of supervised release.

That's where Valencia errs. The authorized term of supervised release for a felony of
Valencia's grade is three years, not two.¹ That the original sentence in May 2011 only
had twenty-four months of supervised release does not place any limitation on future

¹ See 18 U.S.C. § 3583(b)(2).

1 dispositions for violations of the terms of release. Nothing in the new case Valencia cited,
2 *United States v. Hertler*,² suggests otherwise.

3 Valencia is correct that section 3583(h) places a limitation on the total time—
4 incarceration plus supervised release to follow—that the Court may impose upon
5 revocation. That limitation applied in May 2012 as it does at this week’s disposition
6 hearing. But the limit has nothing to do with twenty-four months. Incarceration plus
7 supervised release to follow must, in Valencia’s case, not exceed thirty-six months. His
8 May 2012 sentence fell well within that limitation.

9 Valencia admitted his violation without a written agreement. The Court may now
10 consider the time-served sentence he requests, or it may consider a guideline sentence of
11 between seven and thirteen months, or it may consider any sentence that does not exceed
12 thirty-six months when totaling custody and release time. But in considering any of these
13 sentences, the Court should not take into account the fact that his prior sentence was
14 illegal and he shouldn’t have been on supervised release at the time of his violation—
15 because that’s not correct.

16 Respectfully submitted this 21st day of January, 2015.

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18 JOHN S. LEONARDO
19 United States Attorney
20 District of Arizona

21 *s/ Brian R. Decker*

22 BRIAN R. DECKER
23 Assistant U.S. Attorney

24 Copy of the foregoing served electronically or by
25 other means this 21st day of January, 2015, to:

26 Mark Willimann, Esq.
27 _____

28 ² No. 13-30273, 2015 WL 178350 (9th Cir. Jan. 15, 2015).